

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES G. REGNIER

Claimant

VS.

ROADWAY EXPRESS, INC.

Respondent

Self-Insured

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Docket No. 210,315

ORDER

Respondent requested review of the Preliminary Decision dated December 23, 1997, entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

The Administrative Law Judge ordered payment of temporary total disability benefits until such time as claimant was provided accommodated work or until further order. Because claimant has allegedly reached maximum medical recovery, respondent contends the Administrative Law Judge exceeded his jurisdiction by ordering those benefits. In addition, respondent contends the Administrative Law Judge exceeded his jurisdiction by limiting the conditions that would justify terminating payment.

The only issue now before the Appeals Board is whether the Administrative Law Judge has exceeded his jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

Claimant, an over-the-road driver, was injured in a truck accident on December 28, 1995. The accident arose out of and in the course of claimant's employment with the respondent. Claimant has been released to return to work but restricted from driving a truck.

One of the issues before the Administrative Law Judge at the preliminary hearing was whether claimant had reached maximum medical recovery. Claimant argued that he had not; respondent argued that he had.

Under K.S.A. 44-510c, a release to return to work with temporary medical restrictions does not preclude an order for temporary total disability benefits when the health care provider, after considering the worker's job duties, indicates the worker is unable to perform those duties.

By ordering the payment of temporary total disability benefits until such time as claimant is provided accommodated work, the Administrative Law Judge determined that claimant had not yet reached maximum medical recovery and that claimant had been released to work with temporary medical restrictions. Therefore, under K.S.A. 44-510c, the Administrative Law Judge had the authority to order the payment of benefits. The Appeals Board is without jurisdiction at this juncture of the proceeding to reweigh the evidence and determine whether claimant meets the definition of being completely and temporarily disabled.

By its very definition, temporary total disability exists only as long as a worker's medical condition is temporary in nature. But when the medical condition becomes permanent in nature and when temporary work restrictions are removed, K.S.A. 44-510c provides that the right to temporary total disability benefits terminates:

Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary medical limitations for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, except that temporary total disability compensation shall not be awarded unless the opinion of the authorized treating health care provider is shown to be based on an assessment of the employee's actual job duties with the employer, with or without accommodation.

The language of the Preliminary Decision should be understood to read that temporary total disability benefits may also be terminated upon a finding that claimant has reached maximum medical recovery, returned to work, the temporary restrictions have been removed, or for any other appropriate reason as set forth by either statute or case law, and upon further order of the Administrative Law Judge.

The Administrative Law Judge has not exceeded his jurisdiction. Further, the questions presented on this review do not constitute any of the preliminary hearing issues set forth in K.S.A. 1997 Supp. 44-534a that may be appealed. Consequently, the Appeals Board does not have the jurisdiction to review this proceeding at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that respondent's appeal of the Preliminary Decision dated December 23, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Wade A. Dorothy, Lenexa, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director